

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MASOUD KHAZALI,

Plaintiff,

v.

ELIZABETH BERNES,

Defendant.

CASE NO. C16-1022JLR

ORDER DISMISSING  
COMPLAINT AND ACTION

**I. INTRODUCTION**

Before the court is *pro se* Plaintiff Masoud Khazali's civil rights complaint. (Compl. (Dkt. # 4).) Mr. Khazali named Judge Elizabeth Bernes of the King County Superior Court in Washington State as the sole defendant in this action. (*See id.* at 1.)<sup>1</sup> Mr. Khazali is proceeding *in forma pauperis* ("IFP"). (*See* IFP Ord. (Dkt. # 3) at 1 (granting Mr. Khazali's motion for leave to proceed IFP).) However, in granting Mr.

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<sup>1</sup> The court uses the pagination assigned by the court's electronic docketing system when referring to page numbers of Mr. Khazali's complaints.

1 Khazali IFP status, Chief Magistrate Judge James P. Donohue, recommended review of  
 2 Mr. Khazali's complaint under 28 U.S.C. § 1915(e)(2)(B). (IFP Ord. at 1.) The court has  
 3 conducted the recommended review and DISMISSES Mr. Khazali's complaint and this  
 4 action with prejudice and without leave to amend his complaint as more fully described  
 5 below.

## 6 II. BACKGROUND

7 On June 30, 2016, Mr. Khazali filed a motion for leave to proceed IFP (IFP Mot.  
 8 (Dkt. # 1)), along with a proposed complaint (Dkt. # 1-1). On July 13, 2016, Magistrate  
 9 Judge Donohue granted Mr. Khazali's IFP motion, and his complaint was filed on the  
 10 court's docket on the same day. (IFP Ord.; Compl.) In his order Magistrate Judge  
 11 Donohue "recommends review" of Mr. Khazali's complaint under 28 U.S.C.  
 12 § 1915(e)(2)(B). (IFP Ord. at 1.)

13 In addition to the present suit, on June 30, 2016, Mr. Khazali also filed a related  
 14 action in this court against "King County Court of the Washington State" to "[s]top the  
 15 proceeding on the case number: 15-3-00152-7 SEA."<sup>2</sup> (*See Khazali v. King Ct. Court of*  
 16 *Wash. State*, No. C16-1021JLR, W.D. Wash. ("Khazali I"), Compl. (Dkt. # 4) at 4.) In  
 17 addition to a variety of other relief, he asks this court to (1) "[v]oid all the [o]rders of the  
 18 King County Court of Washington" in the state court case, (2) "[s]tart an investigation on

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20 <sup>2</sup> The court liberally construes Mr. Khazali's related complaint to be against King County  
 21 Superior Court for the State of Washington. *See Balisteri v. Pacifica Police Dep't*, 901 F.2d  
 22 696, 699 (9th Cir. 1988) ("[P]ro se pleadings are liberally construed, particularly where civil  
 rights claims are involved.").

the [k]idnapping third party [sic] in the case,” and (3) “[t]ak[e] the kidnapped child from the [k]idnappers and return[] him to his custodian [f]ather by a Federal agent.” (*Id.* at 4.)

The court has reviewed the docket, pleadings and orders that are on file and publically available in King County Superior Court Case Number 15-3-00152-7 SEA.<sup>3</sup> *See In re the Custody of: T.K.K.*, No. 15-3-00152-7 SEA, King County Superior Court of the State of Washington (“*In re the Custody of: T.K.K.*”).<sup>4</sup> The state court matter was initiated on January 5, 2015, when the grandmother of Mr. Khazali’s son filed a petition for non-parental custody of the boy. *Id.*, Dkt. # 1. On March 23, 2016, Judge Berns issued a temporary restraining order against Mr. Khalazi, which prohibited him from having contact with his son or his son’s grandmother until the case could be tried or until

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<sup>3</sup> Under Federal Rule of Evidence 201, the court may take judicial notice of the docket and various orders issued by King County Superior Court in this related action in state court. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (“We may take judicial notice of court filings and other matters of public record”); *In re Zulueta*, 520 F. App’x 558, 559 (9th Cir. 2013) (taking judicial notice of the docket in underlying bankruptcy proceedings); *Rodriguez v. Disner*, 688 F.3d 645, 660 n.11 (9th Cir. 2012) (taking judicial notice of briefs filed in a related case); *Roberson v. City of L.A.*, 220 F. App’x 522, 523 (9th Cir. 2007) (taking judicial notice of the state court docket sheet in the underlying action); *Asdar Grp. v. Pillsbury, Madison & Sutro*, 99 F.3d 289, 290 n.1 (9th Cir. 1996) (ruling that the court may take judicial notice of the pleadings and court orders in earlier related proceedings); *Madden v. Cate*, No. CV 11-5652 FMO(JC), 2013 WL 5741781, \*3 n.5 (C.D. Cal. Oct. 22, 2013) (taking judicial notice of the California Supreme Court docket); *Rosal v. First Fed. Bank of Cal.*, 671 F. Supp. 2d 1111, 1120-21 (N.D. Cal. 2009) (taking judicial notice of plaintiff’s bankruptcy petition, an order granting a motion for relief from the automatic stay, and the bankruptcy court’s order of dismissal); *Retired Emps. Ass’n of Orange Cty., Inc. v. Cty. of Orange*, 632 F. Supp. 2d 983, 985 (C.D. Cal. 2009) (taking judicial notice of a bankruptcy court order under Rule 201); *Schweitzer v. Scott*, 469 F. Supp. 1017, 1020 (C.D. Cal. 1979) (ruling in a case involving review under 28 U.S.C. § 1915 that “the Court is empowered to and does take judicial notice of court files and records”). Further, the court may take judicial notice of appropriate public records on its own without a party’s request. *See Fed. R. Evid.* 201(c).

<sup>4</sup> To protect the privacy of the child at issue, the court has replaced the child’s name in the title of the case with initials. *See Local Rule W.D. Wash. LCR 5.2(a)(2).*

1 August 1, 2016, whichever occurred later. *Id.*, Dkt. # 109. The case was reassigned to  
2 Judge Sean P. O'Donnell on July 13, 2016. *Id.*, Dkt. # 119. Judge O'Donnell held a non-  
3 jury trial on August 1, 2016. *Id.*, Dkt. # 126. On August 3, 2016, Judge O'Donnell  
4 issued another temporary restraining order against Mr. Khalazi, which prohibits him from  
5 having contact with his son or his son's grandmother until September 6, 2016, or until  
6 further order of the court. *Id.*, Dkt. # 131.

7 In the present suit, Mr. Khazali alleges Judge Berns failed to "respond[] in any  
8 way to [his] motions for dismissal of the case and dismissal of the restraining order."  
9 (Compl. at 6.) He alleges that she ignored his report of a kidnapping and "legalized the  
10 [k]idnapping" of his child. (*See id.*) Mr. Khazali alleges that he was "judged to be  
11 unstable [sic] man who could hurt court personnel." (*Id.* at 7.) He further alleges that he  
12 "has been restrained to contact his own child for so long and security is summoned only  
13 because of what he says and what he wrote," and that he "only criticized the court and the  
14 States." (*Id.*) He alleges that as a result of the "legalized . . . kidnapping" of his child, he  
15 has "lost his business, home, and belonging[s]." (*Id.*) He alleges that "Judge . . .  
16 Berns . . . tortured [him] and his family for what he said or what he wrote or what he  
17 believed!" (*Id.*) Finally, he asserts that Judge Berns did not act within her "judicial duty"  
18 when she failed to respond to his motions and ignored his reports of a "[k]idnapping in  
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progress” (*id.* at 6), and that her alleged actions in “forc[ing] and support[ing] the kidnapping of the child” were unconstitutional and non-judicial (*id.* at 7).<sup>5</sup>

Pursuant to Magistrate Judge Donohue’s recommendation, the court now reviews Mr. Khazali’s complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).

### III. ANALYSIS

Title 28 U.S.C. § 1915(e)(2)(B) authorizes a district court to dismiss a claim filed IFP “at any time” if it determines: (1) the action is frivolous or malicious; (2) the action fails to state a claim; or (3) the action seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B).<sup>6</sup> *Pro se* pleadings must be liberally construed. *Balisteri*, 901 F.2d at 699. When reviewing a complaint, however, a court does not accept as true unreasonable inferences or conclusory legal allegations cast in the form of factual allegations. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.”); *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981); *Spewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (“Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”); *Clegg v. Cult Awareness*

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<sup>5</sup> Mr. Khazali’s complaint states: “The judge forced and supported the kidnapping of the child with her none constitutional, none judicial action.” (Compl. at 7.) The court liberally construes this statement as indicated above.

<sup>6</sup> Under *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (per curiam), the court may properly apply the screening provisions of 28 U.S.C. § 1915(e)(2)(B) to non-prisoner civil litigants seeking to proceed IFP.

1 *Network*, 18 F.3d 752, 754-55 (9th Cir. 1994) (“[T]he court is not required to accept legal  
2 conclusions cast in the form of factual allegations if those conclusions cannot reasonably  
3 be drawn from the facts alleged.”); *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th  
4 Cir. 1988) (“[C]onclusory allegations without more are insufficient to defeat a motion to  
5 dismiss for failure to state a claim”). If a plaintiff’s complaint is found deficient and an  
6 amendment could possibly cure the deficiency, the complaint must be dismissed with  
7 leave to amend. *See Eldridge v. Block*, 832 F.2d 1132, 1135-37 (9th Cir. 1987).  
8 However, leave to amend is properly denied “where the amendment would be futile.”  
9 *DeSoto v. Yellow Freight Sys.*, 957 F.2d 655, 659 (9th Cir.1992).

10 Judges are absolutely immune from liability for damages based on acts performed  
11 in their official capacities, *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en  
12 banc), and this immunity shields judges from liability for damages in civil rights suits for  
13 judicial acts performed within their subject matter jurisdiction, *Stump v. Sparkman*, 435  
14 U.S. 349, 356 (1978). The public policy that underlies judicial immunity is the  
15 furtherance of independent and disinterested judicial decision making. *Ashelman*, 793  
16 F.2d at 1078. To effectuate this policy, the Ninth Circuit broadly construes the scope of  
17 judicial immunity. *Id.* Judicial immunity is not affected by the motives underlying  
18 judicial acts. *Id.* at 1077. Judicial immunity applies even if there are allegations that a  
19 judicial decision resulted from a bribe or a conspiracy. *Id.* at 1078. It applies no matter  
20 how “erroneous the act may have been, and however injurious in its consequences it may  
21 have proved to the plaintiff.” *Id.* at 1074 (citing *Cleavinger v. Saxner*, 474 U.S. 193  
22 (1985) (quotations omitted)). Judicial immunity “is not limited to immunity from

1 damages, but extends to actions for declaratory, injunctive and other equitable relief.”  
 2 *Moore v. Brewster*, 96 F.3d 1240, 1243 (9th Cir.1996) (discussing federal judges’  
 3 immunities).<sup>7</sup>

4 Judges are not immune, however, if they act in the clear absence of all jurisdiction  
 5 or perform acts that are not judicial in nature. *Ashelman*, 793 F.2d at 1075. Acts are  
 6 judicial where the acts are normally performed by a judge, and where the parties deal  
 7 with the judge in his or her judicial capacity. *Id.*; *Sparkman*, 435 U.S. at 361; *Crooks v.*  
 8 *Maynard*, 913 F.2d 699, 700 (9th Cir. 1990). A judge will not be deprived of immunity  
 9 because the action he or she took was in error, was done maliciously, or was in excess of  
 10 his or her authority; rather, he or she will be subject to liability only when he or she has  
 11 acted in the clear absence of all jurisdiction, *Sparkman*, 435 U.S. at 356-57; that is, when  
 12 he or she acts in a private or nonjudicial capacity, *see Henzel v. Gerstein*, 608 F.2d 654,  
 13 658 (5th Cir. 1979).

14 Judge Berns was acting within her normal, official judicial capacity and function  
 15 when she refused to accept or denied Mr. Khazali’s motions. (*See* Compl. at 6.) Based  
 16 on the court’s review of the King County Superior Court docket and orders in that case,  
 17 she was also acting within her normal, official judicial capacity when she entered a  
 18 temporary restraining order against Mr. Khazali, which allowed his child to remain with  
 19 the child’s grandmother and effectively prevented Mr. Khazali from contacting his child.

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 21 <sup>7</sup> Moreover, in 1996 Congress amended 42 U.S.C. § 1983 to prohibit the grant of  
 22 injunctive relief against any judicial officer, state or federal, acting in his or her official capacity  
 “unless a declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C.  
 § 1983.

1 Mr. Khazali's descriptions of Judge Berns's actions as "legalized kidnapping" or  
2 "torture" (*see* Compl. at 7) are to no avail because they constitute legal conclusions,  
3 conclusory factual allegations, or unreasonable factual inferences that the court need not  
4 accept as true. *See Iqbal*, 556 U.S. at 678; *W. Mining Council*, 643 F.2d at 624; *Sprowell*,  
5 266 F.3d at 988; *Clegg*, 18 F.3d at 754-55. The same is true of Mr. Khazali's conclusory  
6 allegations that Judge Berns's acts were non-judicial in nature or not within her "judicial  
7 duty." (*See* Compl. at 6-7.)

8 Because Mr. Khazali's allegations challenge core judicial functions, such as  
9 presiding over child custody proceedings, maintaining control over the case docket, and  
10 determining motions, Mr. Khazali's claims are barred by the doctrine of judicial  
11 immunity. *See, e.g., Gonsalves v. Unknown Judge*, No. CIV. 12-00034 LEK, 2012 WL  
12 214711, at \*2 (D. Haw. Jan. 24, 2012) (ruling that because the plaintiff's allegations  
13 challenged judicial functions such as presiding over proceedings, maintaining control  
14 over the docket, and deciding motions, the plaintiff's claims were barred by judicial  
15 immunity). Accordingly, the court DISMISSES Mr. Khazali's complaint with prejudice  
16 pursuant to 28 U.S.C. § 1915(e)(2)(B).

17 In addition, the court finds that any amendment of Mr. Kzahali's complaint would  
18 be futile because Judge Berns is immune from suit. *See Smith v. Commanding Officer,*  
19 *Air Force Accounting & Fin. Ctr.*, 555 F.2d 234, 235 (9th Cir. 1977) ("[I]t was within the  
20 discretion of the district court to deny leave to amend when the amendment would be  
21 'futile' because [the plaintiff] could not prevail on the merits because of the  
22 Government's immunity.") (citing *Foman v. Davis*, 371 U.S. 178 (1962) and *Brennan v.*



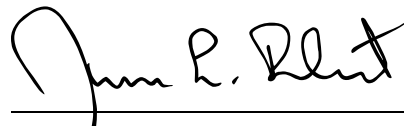
1 *Univ. of Kansas*, 451 F.2d 1287, 1289 (10th Cir. 1971)); *see also Huffine v. Molloy*, No.  
2 C07-1556-RSMJPD, 2007 WL 4026155, at \*1 (W.D. Wash. Nov. 14, 2007) (denying  
3 leave to amend as futile because plaintiff's complaint was directed at a judge who was  
4 immune from suit). Accordingly, the court DENIES Mr. Khazali leave to amend his  
5 complaint.

6 Finally, the court CERTIFIES that any IFP appeal from this order would not be  
7 taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*,  
8 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent  
9 appellant is permitted to proceed IFP on appeal only if appeal would not be frivolous).

#### 10 IV. CONCLUSION

11 For the foregoing reasons, the court DISMISSES this action with prejudice under  
12 28 U.S.C. § 1915(e)(2)(B) because the complaint is frivolous, fails to state a claim upon  
13 which relief can be granted, and seeks relief against a defendant who is immune from  
14 suit. Further, because any amendment of Mr. Khazali's complaint would be futile, the  
15 court DENIES Mr. Khazali leave to amend his complaint. Finally, the court CERTIFIES  
16 that any IFP appeal from this order would not be taken in good faith.

17 Dated this 24th day of August, 2016.

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21 JAMES L. ROBART  
22 United States District Judge